

(2006) 02 KAR CK 0014
In the Karnataka High Court
Case No : Writ Petition No. 8818 of 2004

Sharanabasappa

APPELLANT

Vs

The General Manager (R and E), Bharat Sanchar Nigama
Limited and Another

RESPONDENT

Date of Decision : 20-02-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2006) 2 KarLJ 637 : (2006) 3 KCCR 158 SN

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Maheshwaraswamy Hiremath, for the Appellant; G. Sujatha Lakshman and Y. Hariprasad for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—This writ petition is by a person who is aggrieved as he has not been provided employment on compassionate ground in the first respondent-organization as petitioner's father who was working as Phone-Inspector in the very organisation had died while in service and the petitioner it appears has made an application seeking employment on compassionate ground.

2. Notice having been issued to respondents, the respondents have entered appearance and have filed their statement of objection and additional statement. The respondents have sought to justify their action for denying employment to the petitioner on compassionate ground for the reason that the financial conditions of the petitioner does not warrant such action in terms of the recommendation made by the High Power Committee set up for examination of such cases.

3. It is against this communication dated 31-7-2003 vide Annexure-A this writ petition is filed. The brief facts are that the petitioner's father was working as Phone-Inspector in the 2nd respondent-organisation in Ilkal Branch of Bagalkot

District. He died on 27-8-2001 after having put in 39 years of service while he was 59 years 7 months and a few days at that time.

4. It appears an application dated 6-3-2002 was filed by the petitioner claiming to be his son and that he is also a commerce graduate with additional qualification of familiarity with computer, etc., and had sought for appointment on compassionate ground. The ground urged in support of the petition is that financial condition cannot be a relevant criteria. The object of providing employment on compassionate ground in such circumstances is not merely to provide financial stability but also emotional stability, etc., and in this regard reliance is placed on the decision of this Court in *Usha Ramprasad v. India Trade Promotion Organisation* ILR 1993 Kar. 1318 (sic)

5. Smt. G. Sujatha Lakshman, learned Counsel appearing for the respondents submits that appointment on compassionate ground is not a matter of right that unless the situation warrants and the appointment being only to tide over the difficult situation, appointment on the ground of compassionate ground is not justified. Learned Counsel places reliance in this regard on the decision of the Supreme Court in *Commissioner of Public Instructions and Others Vs. K.R. Vishwanath*,

6. It is now well-settled that appointment on compassionate ground is not a matter of right. If it is not right it is not enforceable against the employer. Such matters are examined by this Court only for the purpose of the Court being satisfied that action of the respondents being part of State is fair, non-arbitrary and not with mala fides. The legal position in this regard has been very picturesquely brought out in the decision of the Supreme Court relied upon by the learned Counsel for the respondent which reads as under:

9. Now comes the question of the object of compassionate appointment.

10. As was observed in *State of Haryana and Others Vs. Rani Devi and Another*, , it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased-employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased-employee. In *Rani Devi's* case, it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In *Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar* and

another, , it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in Umesh Kumar Nagpal Vs. State of Haryana and Others, , that as a rule in public service appointment should be made strictly on the basis of open invitation of application and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

11. In Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in Smt. Phoolwati Vs. Union of India and Others, and Union of India (UOI) and Others Vs. Bhagwan Singh, . In Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, , it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointments to one of the dependents of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

7. In the present case, the respondent having given consideration to the application and having found that the circumstances do not warrant the appointment on compassionate ground, particularly as the members of the family were bestowed with several benefits and the family members of the

deceased employee including the petitioner being not under any financial distress, if the request of the petitioner is rejected, I do not find any illegality or mala fide action on the part of the respondents and such a decision does not warrant interference by this Court in the exercise of writ jurisdiction.

The writ petition is accordingly dismissed.